

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK TUNNE,

Plaintiff,

-against-

DISCOVER FINANCIAL SERVICES, INC.,
et al,

Defendants.

22-CV-5288 (JGLC)

**ORDER ADOPTING
AMENDED REPORT AND
RECOMMENDATION**

JESSICA G. L. CLARKE, United States District Judge:

On August 19, 2024, Defendant Discover Financial Services, Inc., (“Discover”), filed a motion to dismiss Plaintiff’s second amended complaint. ECF No. 74. On August 27, 2024, this Court referred the motion to Magistrate Judge Valerie Figueredo for a Report and Recommendation. ECF No. 75. In a Report and Recommendation filed on September 20, 2024, Magistrate Judge Figueredo recommended that Discover’s motion be granted, and the relevant claims dismissed with prejudice. *See* ECF No. 77. Shortly thereafter, Plaintiff filed an untimely opposition to the motion, *see* ECF No. 78, and Magistrate Judge Figueredo issued an Amended Report and Recommendation on October 3, 2024 to address the arguments in Plaintiff’s opposition. ECF No. 80. The Amended Report and Recommendation similarly recommended Discover’s motion be granted. *Id.*

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that

there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This “clearly erroneous” standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the Amended Report and Recommendation advised the parties that they had fourteen days from service of the Amended Report and Recommendation to file any objections, and warned that a failure to timely file such objections would result in waiver of any right to object. *See* ECF No. 80 at 13. In addition, the Amended Report and Recommendation expressly called the parties’ attention to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Nevertheless, as of the date of this Order, no objections have been filed and no application for an extension of time to object has been made. Accordingly, Plaintiff has waived the right to object to the Amended Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992).

Despite the waiver, the Court has reviewed the Amended Report and Recommendation, unguided by objections, and finds it to be well reasoned and grounded in fact and law. Accordingly, the Report and Recommendation is ADOPTED in its entirety. The Clerk of Court is directed to terminate ECF No. 74, and to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: November 18, 2024
New York, New York



JESSICA G. L. CLARKE
United States District Judge